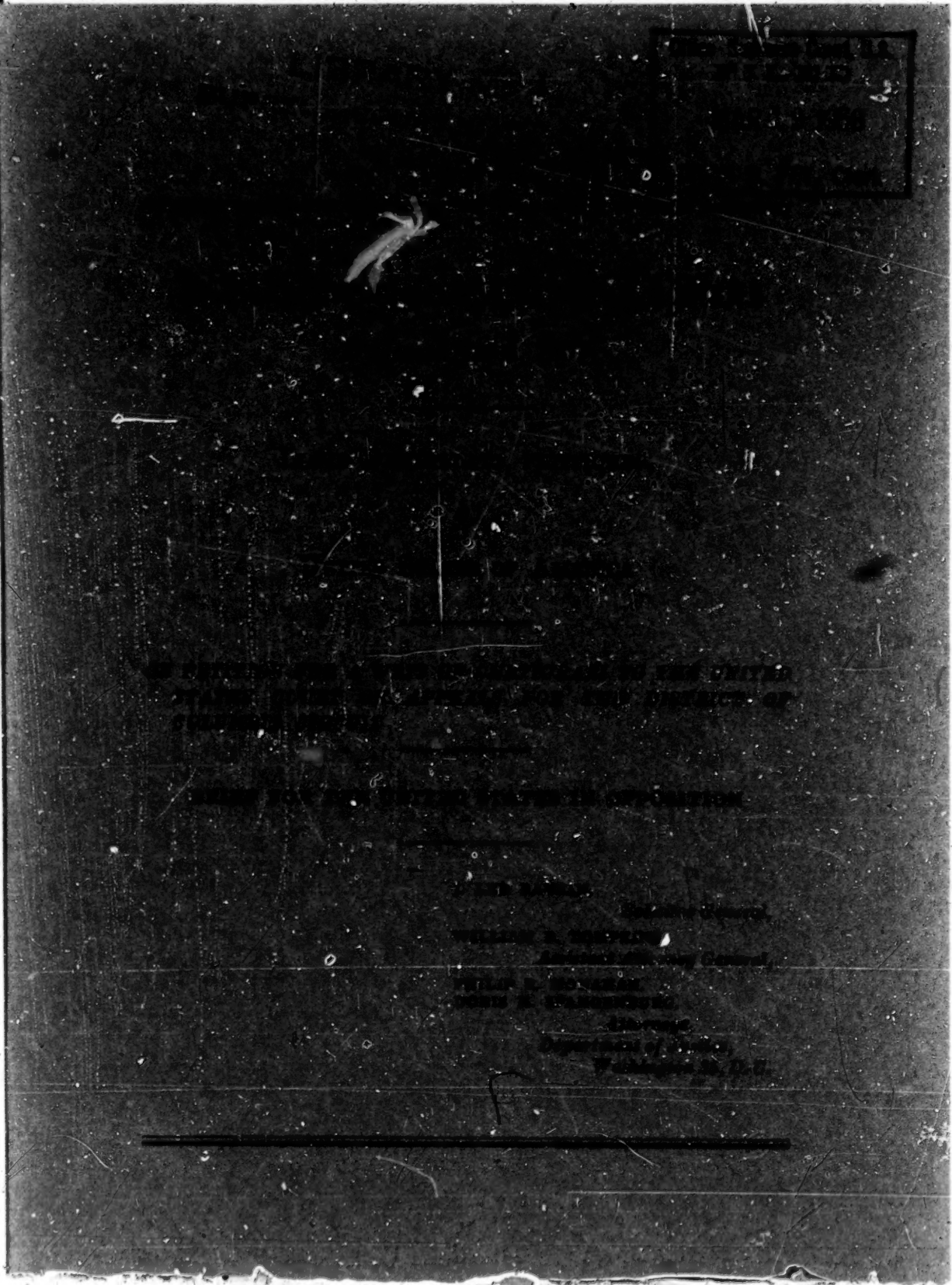

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 787

LLOYD BARENBLATT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority (Pet. 19-34) and two dissenting opinions (Pet. 34-37, 38) in the Court of Appeals, sitting *en banc*, which were rendered following this Court's remand of the case (354 U.S. 930) for consideration in the light of *Watkins* v. *United States*, 354 U.S. 178, have not yet been reported. The original opinion of the three-judge division of the Court of Appeals (Pet. 39-59) is reported at 240 F. 2d 875.

JURISDICTION

The judgment of the Court of Appeals following this Court's remand was entered on January 16, 1958 (Tr. 240). The petition for a writ of certiorari was filed on February 15, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether this Court, in *Watkins* v. *United States*, 354 U.S. 178, invalidated the authorizing resolution of the House Committee on Un-American Activities as too vague to support the compulsory taking of testimony in any inquiry whatsoever.

2. Whether, in the circumstances presented by this record, and in the light of the principles enunciated in *Watkins*, petitioner was apprised of the subject of the Committee's inquiry, and the pertinency of the questions he refused to answer, with sufficient definiteness to sustain his conviction for willfully refusing to answer those questions.

3. Whether petitioner's conviction is invalid because the motives of the Committee members in questioning him were, allegedly, solely to "expose" him as a Communist.

4. Whether the Committee's authorizing resolution empowered it to conduct an inquiry into the Communist Party's infiltration and penetration of the field of education.

5. Whether the Committee's authorizing resolution, as construed and applied in this case, constituted an unlawful abridgment of petitioner's First Amendment rights.

STATUTE AND RULE INVOLVED.

2 U.S.C. 192 (R.S. 102, as amended) and the pertinent provisions of Rule XI of the Rules of the House of

Representatives [1] (as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, 828) are set forth in Appendix A to the petition for certiorari (Pet. 17-18).

STATEMENT

Petitioner was charged in a five-count indictment (Tr. 201-2), returned in the United States District Court for the District of Columbia, with having refused, in violation of 2 U.S.C. 192 (Pet. 17), to answer five questions, pertinent to the matter under inquiry, put to him by a subcommittee of the Committee on Un-American Activities of the House of Representatives—whether he then was or ever had been a member of the Communist Party (counts 1 and 2), whether he had known one Francis Crowley as a member of the Communist Party (count 3), and whether he (petitioner) had ever been a member, while a student at the University of Michigan, of the "Haldane Club of the Communist Party" (count 4) or of the "Council of Arts, Sciences, and Professions" (count 5). Petitioner, having waived his right to a trial by jury (Tr. 145-146), was found guilty by the court on all counts (Tr. 192) and was sentenced generally to six months' imprisonment and to pay a fine of $250 (Tr. 199, 215).

On appeal to the Court of Appeals for the District of Columbia Circuit, the judgment of conviction was, on January 3, 1957, unanimously affirmed by a three-judge division of that court (Pet. 39-59; 240 F. 2d 875). Thereafter, this Court, on June 24, 1957, on petition for

[1] These Rules were adopted by the House at the commencement of the Eighty-Third Congress as the rules of the House for that Congress (H. Res. 5, 83d Cong., 1st sess. (G. Ex. 2, Tr. 42, 44), 99 Cong. Rec. 15, 16, 18, 24). It was during that Congress that the refusals to answer questions here involved occurred (June 28, 1954).

a writ of certiorari to review this judgment, granted the petition, vacated the judgment of affirmance, and remanded the case to the Court of Appeals "for consideration in light of *Watkins* v. *United States,* 354 U.S. 178" (354 U.S. 930). The case was thereafter rebriefed and reargued in the Court of Appeals, which *sua sponte* determined to hear the case on remand *en banc*. On January 16, 1958, the Court of Appeals again affirmed the judgment of conviction (Pet. 19-34), four judges dissenting (Pet. 34-38).[2]

The pertinent facts may be summarized as follows:

On February 25, 1953, the Committee on Un-American Activities of the House of Representatives commenced a series of public hearings in connection with an investigation which it was conducting into "Communist Methods of Infiltration" into the field of "Education" (G. Ex. 7, p. 1; Tr. 50).[3] Immediately prior to interrogating the first witness, Representative Velde, the Committee Chairman, made an opening statement setting forth the nature and purpose of the investigation (*id.*, pp. 1-3).[4] The investigation, the Chairman

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[2] The majority opinion was written by Circuit Judge Bastian, who also authored the opinion of the original three-judge division. Chief Judge Edgerton wrote a dissenting opinion in which Circuit Judge Bazelon joined (Pet. 34-37), and Circuit Judge Fahy wrote a separate dissenting opinion in which Circuit Judge Washington joined (Pet. 38).

[3] Government Exhibit 7 is the printed transcript (part 1) of the Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., February 25, 26, and 27, 1953, entitled *Communist Methods of Infiltration (Education)*.

[4] This statement by the Committee Chairman is reproduced in full as an appendix to the original opinion of the Court of Appeals (Pet. 56-59) and is again referred to in the majority opinion of the *en banc* court upon remand (Pet. 26).

said, was one of a series of investigations which the Committee had been conducting into "Communists and Communist activities wherever it has substantial evidence of its existence" (*id.*, p. 1). "The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field" (*id.*, p. 2). Pointing out that "[t]he committee is charged by the Congress with the responsibility of investigating the extent, character, and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and all other questions in relation thereto that would aid Congress in any necessary remedial legislation," the Chairman observed (*id.*, p. 2):

> It has been fully established in testimony before congressional committees and before the courts of our land that the Communist Party of the United States is part of an international conspiracy which is being used as a tool or weapon by a foreign power to promote its own foreign policy and which has for its object the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence, if necessary. * * *

The Chairman further said that, since "Communism and Communist activities cannot be investigated in a vacuum," the "investigation must, of necessity, relate

to individuals" (*ibid.*). "[T]he objective of this investigation," the statment concluded,

> is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party (*id.*, p. 3).

The Committee thereupon proceeded with the taking of testimony (*id.*, p. 3). Witnesses heard on that day and from time to time thereafter during the year 1953 presented to the Committee "facts within their own knowledge concerning Communist efforts to infiltrate and dominate the teaching profession within the United States" (G. Ex. 9, p. 9; Tr. 61).[5] Illustrative of the testimony was that of the first witness, Robert Gorham Davis, who admitted that he had been, from 1937 to the fall of 1939, a member of a Communist cell on a university campus which included faculty members, teaching fellows, and graduate students (G. Ex. 7, pp. 4, 6). The members of this cell, Davis testified, received instructions and directives from the Communist Party through a paid functionary of the Party (*id.*, pp. 8, 35). From time to time, they were addressed by Party functionary Philip Frankfeld, whose purpose it was to "educate" them politically (*id.*, pp. 8, 10).[6] They would seek to attain positions of leadership in various organizations for the purpose of seeing to it that the policies of such organizations "would be as close to the

[5] Government Exhibit 9 is the *Annual Report of the Committee on Un-American Activities for the Year 1953* (H. Rep. No. 1192, 83d Cong., 2d sess.).

[6] Frankfeld was one of the defendants convicted in a Smith Act trial. See *Frankfeld* v. *United States*, 198 F. 2d 679 (C.A. 4), certiorari denied, 344 U.S. 922.

policies desired by the Communist Party as possible" (*id.*, p. [redacted]). Their primary target in this respect was the local "Teachers' Union" (*id.*, pp. 10, 30). Prior to meetings of the Teachers' Union, the members of the cell used to discuss the policies which they would urge on the Union and the candidates which they would propose and support (*id.*, pp. 9, 11). They would also "endeavor to control the selection of delegates from the local Teachers' Union" to "district" and "national conventions" (*id.*, p. 11). At a caucus of the Communist members of the Teachers' Union preceding a certain convention in New York City which Davis attended, Jack Stachel addressed the group for the purpose of "determin[ing] the policies of the Communists" (*id.*, pp. 19-21).[7]

Davis testified that the following "sum[ming] up" of "the substance" of his testimony by Committee member Jackson was accurate: that the Communist Party (1) sought to "recruit teachers and professors" into the Party, (2) "la[id] down certain broad policies which these teachers and professors were expected to follow," (3) expected such recruited teachers to "infiltrate other teacher groups with the idea of putting forward policies and directives enunciated by the Communist Party," (4) "exercise[d] generally, on behalf of the Communist Party, what influence they could," and (5) "influence[d], to the extent possible, the election of group leaders * * * who were individuals known to be favorable to the policies of the Communist Party" (*id.*, p. 41).

During 1954, the Committee continued its inquiry into Communism in education. On June 28, 1954, Francis

[7] Stachel was one of the defendants in the Smith Act prosecution which culminated in *Dennis* v. *United States*, 341 U.S. 494.

Crowley, in the presence of petitioner (G. Ex. 8, pp. 5802-03),[8] testified before the Committee (*id.*, pp. 5755-83). In introducing Crowley to the Committee, the committee counsel said in part (*id.*, p. 5754):

> The field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley.
>
> It will deal with activities in Michigan, Boston, and in some small degree, New York.

Crowley testified extensively as to his Communist Party activities while he was enrolled as a student at the University of Michigan from August 1947 to June 1950 (*id.*, pp. 5761-5782). While a student there, he said, he was a member of the "Neafus Club," a Party organization comprised of undergraduate students which operated, for the most part, on a secret basis (*id.*, pp. 5762-64). He testified that the Club had "a great deal of influence" (*id.*, p. 5770) and used "every method that Communists could devise to influence the student body opinion in the direction of the Communist movement" (*id.*, p. 5770).

Early in 1950, Crowley further testified, he transferred to the "Haldane Club" of the Communist Party, a group composed of graduate students and teaching fellows at the University (*id.*, p. 5773), which was "even more secret" than the Neafus Club (*id.*, p. 5774). Through his membership in the Haldane Club, Crowley testified, he was "propagandized into believing" that South Korea was the aggressor in the Korean war (*id.*,

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[8] Government Exhibit 8 is the printed transcript of the Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 2d sess., June 28 and 29, 1954, entitled *Communist Methods of Infiltration (Education—Part 9)*.

p. 5781). Although the Club appeared to him at the time to be chiefly "an intellectual group, discussion group" (*id.*, p. 5781), he "definitely" felt, as of the time of his testifying, that the Communist Party was "a conspiracy and not a political party" (*id.*, p. 5783).

Crowley also testified that he shared an apartment with petitioner while they were both graduate students at Michigan in 1950 and that petitioner was likewise a member of the Haldane Club of the Communist Party during that time (*id.*, pp. 5777-8).

Following Crowley, the Committee heard the testimony of Robert H. Silk (*id.*, pp. 5783-91), Norman Cazden (*id.*, pp. 5791-6), and Lester Beberfall (*id.*, pp. 5796-5801), all of whom were identified by Crowley as fellow members of the Communist Party with him at the University of Michigan at some time during the period 1947-1950 (*id.*, pp. 5772-3, 5778). These witnesses were questioned about their Communist Party activities at the University of Michigan and at other educational institutions (*id.*, pp. 5784-86, 5792-3, 5795, 5797-800). All three, admitting that they heard Crowley's testimony concerning them, invoked their privilege against self-incrimination and refused to answer all such questions (*id.*, pp. 5784, 5792, 5797).

Petitioner, who also had heard Crowley's testimony (*id.*, pp. 5802-3), was next called to testify (*id.*, p. 5801). He admitted that he had been a teaching fellow at the University of Michigan from 1948 to 1950 (*id.*, p. 5813) and that he knew Crowley (*id.*, p. 5802), but refused to state, after having been specifically ordered to do so, whether he then was or ever had been a member of the Communist Party (*id.*, pp. 5805-6, 5812) and to answer the other questions forming the subject-matter of the various counts of the indictment (*id.*, p. 5812; see

supra, p. 3). In so refusing, he specifically disclaimed reliance on his privilege against self-incrimination (*id.*, pp. 5805-6). His refusals were based, he said, on his belief that the questions asked involved an inquiry into his "political beliefs," "religious beliefs," "personal and private affairs," and "associational activities," and that any such inquiry was "beyond the powers of this committee" (*id.*, pp. 5806-7). He did not ask the Committee to explain how the questions which he refused to answer were pertinent to the subject of the inquiry, or to state what that subject was, nor did he give any indication that he was not fully aware of the pertinency of the questions to the subject of inquiry.

The Committee thereafter reported the fact of petitioner's contumacy to the House of Representatives. In its report (H. Rep. 2457, 83d Cong., 2d sess. [G. Ex. 4, Tr. 43], reproduced at 100 Cong. Rec, 11609-11613), the Committee notified the House of petitioner's appearance before it and his refusal to answer Committee questions (100 Cong. Rec. 11609). It advised the House that petitioner's refusals had "deprived your committee of necessary and pertinent testimony and places the said witness in contempt of the House of Representatives of the United States" (100 *id.* 11613).

The exact questions which petitioner refused to answer (see *supra*, p. 3) were stated in the report (100 Cong. Rec. 11609), which also set forth in its entirety the transcript of petitioner's testimony before the Committee, including the context in which the questions were propounded and petitioner's stated reasons for refusing to answer them (100 *id.* 11609-11613).[9] The

[9] Included in this transcript, as reproduced in the report, was the formal statement of petitioner's objections to the Committee's questions, which the Committee had incorporated in full in the

report was, on July 23, 1954, "by direction of the Committee on Un-American Activities," submitted to the House, on the floor of the House, by Committee Chairman Velde (100 *id.* 11609) and read by the Clerk (100 *id.* 11609-11613). The Committee Chairman then offered a resolution—H. Res. 666, 83d Cong., 2d sess. (G. Ex. 5, Tr. 43), set forth at 100 Cong. Rec. 11613—resolving that the Speaker of the House certify the Committee's report of petitioner's refusals, "together with all of the facts in connection therewith," under the seal of the House to the United States Attorney for the District of Columbia, to the end that petitioner be proceeded against as provided by law. The House agreed to the resolution (100 Cong. Rec. 11613), and petitioner's prosecution followed.

ARGUMENT

1. Petitioner contends (Pet. 11-12) that "Congress did not authorize the Committee to make *any* inquiry" (Pet. 11, emphasis added), and that the decision below, insofar as it refused so to hold, "conflicts with *Watkins*" [354 U.S. 178] (Pet. 12). This contention, which has the support of two of the dissenting judges (Chief Judge Edgerton and Judge Bazelon, Pet. 34-36), but not of the other two (Judges Fahy and Washington, Pet. 38), assumes that *Watkins* held, in the words of Chief Judge Edgerton (Pet. 34), that "the Committee on Un-American Activities had no authority to compel testimony"—*i.e.*, on any subject whatever—"because it had no definite assignment from Congress." The

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transcript as "Barenblatt Exhibit No. 1" (100 Cong. Rec. 11611-11612). This statement, as noted by the Court of Appeals (Pet. 29), was in the nature of a "legal brief attacking the jurisdiction of the committee * * *."

argument is that this Court in *Watkins*, to use the expression of the majority opinion below (Pet. 21, 23), "struck down" the House Un-American Activities Committee's authorizing resolution as invalid. We submit, however, that the majority are correct in their conclusion that, while this Court on several grounds and "in no uncertain terms" "*criticised* the resolution creating the Committee" (Pet. 21, emphasis added), it did not invalidate it.

In the first place, as the majority note (Pet. 23), if this Court "had intended to strike down the resolution, it would have said so in so many words. It would not have left so vital an issue to inference or interpretation." For "[t]he far-reaching result of such a holding would be that the Committee, established by action of the entire House of Representatives, would be rendered helpless and would not even be able to summon a witness, much less have him testify" (*ibid.*). And "nowhere in the *Watkins* opinion does the Court use language essential to effectuate [such a] result * * *" (*ibid.*). Second, as the majority further note (Pet. 23), had this Court "struck down the resolution creating the Committee the matter would have been ended, without the further, extended discussion found in *Watkins*."[10] Third, as the opinion of the Court of Appeals also observes (Pet. 24), this Court "cited in *Watkins* a

[10]As also remarked by the majority in this connection, "it is clear [this] Court," in *Watkins*, "was familiar with the present case as it is specifically referred to in note 34 of the opinion in *Watkins*. The Court certainly knew, therefore, that Barenblatt's conviction grew out of testimony taken under the same resolution" (Pet. 23-24). Indeed, as the majority goes on to note, "it is reasonable to assume that, had the resolution under which both Watkins and Barenblatt were questioned been stricken in its entirety, this case would have been *reversed* on authority of *Watkins* rather than *remanded* for consideration 'in light of' that opinion" (Pet. 24).

number of cases, both in that Court and in Courts of Appeals, bearing on convictions sustained under the same resolution," without any intimation that such cases should have been or could have been "decided by the simple process of voiding the resolution establishing the Committee." Fourth, Mr. Justice Frankfurter's concurring opinion (354 U.S., at 216-217)—stating his understanding of the Court's holding—does not indicate that holding to be that the Committee's charter was void or wholly incapable of supporting a contempt conviction.

All these considerations show, in our opinion, that, contrary to the views of Judges Edgerton and Bazelon, *Watkins* did not invalidate the Committee's authorizing resolution.

2. What *Watkins* did hold was that that petitioner had not been sufficiently apprised of the pertinency of the questions to an authorized subject under inquiry. Because of the vagueness of the Committee's authorizing resolution, *and* because Watkins could not have known—from such *other* indicia as the opening remarks of the chairman, members, or counsel of the Committee; the nature of the proceedings; the questions themselves; and the chairman's response to an objection based on pertinency (see the majority opinion below, Pet. 23)—what the precise subject under inquiry was, and how the particular questions were pertinent to it, he was under no duty to answer. In the totality of the circumstances presented in that case, including but not limited to the lack of precision in the terms of the Committee's authorizing resolution, the Court held that Watkins could not have known and was not apprised, with the degree of definiteness required by the Due Process Clause to sustain a criminal conviction for willful re-

fusal to answer questions of a congressional committee pertinent to the subject under inquiry, what that subject was and the "connective reasoning" (*Watkins*, 354 U.S., at 215) whereby the questions which he refused to answer were pertinent.

Petitioner argues here (Pet. 14-15) that, similarly, his conviction cannot be sustained "because of the Committee's failure to apprise [him] of the pertinency of the inquiry" (Pet. 14). We submit, however, that it is quite clear from the Statement, *supra*, pp. 4-10, that as the majority opinion (at Pet. 26-33) demonstrates,[11] petitioner was thoroughly aware at the hearing of the subject under inquiry ("communism in education" (Pet. 27)), and how the particular questions (*supra*, p. 3) were germane to that subject. Since petitioner does not, in our opinion, seriously challenge this conclusion (see Pet. 14-15; and footnote 9, *supra*),[12] there is no occasion to elaborate on the detailed showing in the opinion below that petitioner knew, when testifying, the nature of the subject of inquiry, and fully appre-

[11] In this respect, it is important to note, neither dissenting opinion takes issue with the majority.

[12] Referring to one of the many factors mentioned by the court below as evidencing his awareness of the subject of inquiry and the pertinence of the questions—*viz.*, certain statements by Representatives Doyle and Velde quoted by the court at Pet. 31-32—petitioner argues that these statements were made "after the petitioner's testimony was concluded" and so "cannot be held to have put petitioner on notice of the nature of the inquiry" (Pet. 14). The statements in question were made, however, while petitioner was still on the stand (G. Ex. 8, pp. 5813-5814); and, moreover, they constituted but one of many indications noticed by the court below as evidencing petitioner's awareness of the subject of inquiry and the pertinency of the questions. The court stated that it referred to the statements merely "[t]o indicate the length to which the Subcommittee went to indicate to Barenblatt the pertinency of the questions, even though the question of pertinency was not raised by him" (Pet. 31).

ciated the "connective reasoning" by which the precise questions related to it.

Suffice it to emphasize that petitioner admitted having heard the testimony of witness Crowley, who testified shortly before petitioner (*supra*, pp. 8-9); that the committee counsel, in introducing Crowley to the Committee, stated that the "field covered" would be "communism in education" and Crowley's "experiences and background in the party" (*supra*, p. 8); that the bulk of Crowley's testimony concerned his Communist Party activities at the University of Michigan (G. Ex. 8, pp. 5761-5782); and that Crowley identified petitioner as a member of the Party's Haldane Club at that university (*supra*, p. 9). The questions which petitioner refused to answer (*supra*, p. 3) were plainly pertinent to Crowley's testimony and the announced subject of the inquiry. Petitioner, furthermore, never raised the issue of pertinency nor otherwise indicated that he was not completely aware of how the questions were pertinent [13] (*supra*, pp. 9-10). The court below was therefore correct, we submit, in determining that this petitioner knew the subject of inquiry and the rational connection between it and the unanswered questions.

3. Petitioner cites a sentence in the Committee's 1954 *Annual Report* (H. Rep. No. 57, 84th Cong., 1st

[13] The law applicable to a witness who does not make known to a congressional committee that he is objecting to its questions on grounds of lack of pertinency is stated in *Sinclair v. United States*, 279 U.S. 263, 299, cited with approval in the *Watkins* case (354 U.S. at 208): "Intentional violation is sufficient to constitute guilt. There was no misapprehension as to what was called for. The refusal to answer was deliberate. The facts sought were pertinent as a matter of law, and § 102 made it appellant's duty to answer. He was bound rightly to construe the statute. His mistaken view of the law is no defense."

sess. (G. Ex. 10)), in which it was stated that "[t]he 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" (p. 15; Pet. 13); from this, he argues that "[t]he legislative inquiry, and the resulting conviction, were unconstitutional and unlawful because of its unlawful purpose to expose petitioner" (Pet. 13). He relies on this Court's observation in *Watkins* that it had "no doubt that there is no congressional power to expose for the sake of exposure" (354 U.S. at 200).

However, the very passage of the *Watkins* opinion which contains this observation of the Court goes on to state (*ibid.*):

> * * * The public is, of course, entitled to be informed concerning the workings of its government. [Footnote reference omitted] That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals. *But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served.* [Emphasis added.]

Then, in a footnote reference, the Court adds (354 U.S. at 200, fn. 34):

> Compare the treatment of this point in *Barenblatt* v. *United States*, 240 F. 2d 875, 880-881 [and other cited cases].

This Court thus pointed to the treatment of this subject by the court below in its prior opinion in this case (which opinion the court incorporates by reference in its post-remand opinion; see Pet. 33).[14]

4. Next, it is argued (Pet. 10-11) that, assuming that *Watkins* did not hold the Committee's authorizing resolution to be invalid on account of vagueness, that decision, when "read together with" *Sweezy* v. *New Hampshire*, 354 U.S. 234 (decided the same day as *Watkins*), establishes at least that the resolution did not authorize the Committee to inquire into "the field of education" (Pet. 10).

(*a*). This case is distinguishable from *Sweezy* in at least two decisive respects. In the first place, the basic difficulty which the principal opinion in the *Sweezy* case[15] found with that conviction was that it was for refusing to answer questions by a committee of one man (the New Hampshire Attorney General), to whom the New Hampshire Legislature had delegated total and uncontrolled responsibility for conducting the inquiry which it had authorized, and for seeing to it that only such information as the Legislature desired, and nothing more, be sought through the use of the subpoena power (354 U.S. at 251-255).[16] Petitioner's

[14] This issue is not a point of difference between the majority opinion below and either of the dissenting opinions. See also our reply to this contention in our brief in opposition to petitioner's former petition for certiorari (No. 742, Oct. Term, 1956, pp. 13-14).

[15] *I.e.*, the opinion of Chief Justice Warren, in which Mr. Justice Black, Mr. Justice Douglas, and Mr. Justice Brennan joined.

[16] In *Sweezy*, the New Hampshire Legislature authorized the State Attorney General, as a one-man legislative committee, to conduct an investigation to determine whether "subversive" persons (as defined by statute) were located in the State. The Attorney General was authorized to act on his own motion and on such in-

conviction is not vulnerable to this criticism. Here, unlike *Sweezy*, the House of Representatives retained at all times responsibility for the actions of its Committee, which could only report to its parent body and recommend action with respect to recalcitrant witnesses. Here, unlike the situation which obtained in *Sweezy* (see fn. 16, *supra*), the House itself cited petitioner for contempt and referred his case to the United States Attorney for prosecution. It took this action, furthermore, only after being fully apprised, through a documented committee report, of the circumstances surrounding the calling of petitioner as a witness, the nature of the inquiry in which the Committee was engaged, and the exact questions which he refused to answer. See *supra*, pp. 10-11.

Secondly, while the New Hampshire Attorney General's interrogation of Sweezy touched upon some of

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formation as in his judgment was reasonable or reliable. He was given the power of subpoena, but not the power to hold witnesses in contempt. Pursuant to this authorization, the Attorney General summoned Sweezy, interrogated him on various subjects, and, upon Sweezy's refusal to answer certain questions, filed a petition in the Superior Court of Merrimack County asking that the court propound the questions to the witness. The court, deeming the questions pertinent, summoned Sweezy as a witness, and, on his continued refusal to answer, adjudged him in contempt. The Legislature had no part in the process save for its initial general authorization to the Attorney General to conduct an investigation. (354 U.S. at 236-245.)

Thus, as the principal opinion observed (354 U.S. at 254):

> * * * neither we nor the state courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the legislature wanted to be informed when it initiated this inquiry. The judiciary are thus placed in an untenable position. Lacking even the elementary fact that the legislature wants certain questions answered and recognizing that petitioner's constitutional rights are in jeopardy, we are asked to approve or disapprove his incarceration for contempt.

the philosophic aspects of Communism as an abstract body of thought, such as, for example, whether or not he advocated "Marxism" or espoused the theory of "dialectical materialism" (see 354 U.S. at 243-244), the questions which he was convicted for refusing to answer related primarily to his connections and associations, not with the Communist Party, but with the *Progressive* Party, and persons with whom he was acquainted in that organization (see 354 U.S. at 239-244).[17] This is the aspect of the *Sweezy* case which, for Mr. Justice Frankfurter, with whom Mr. Justice Harlan joined, was decisive (see 354 U.S. at 264-267).[18] The Committee's inquiry in the case at bar, on the other hand, was concerned with the *Communist* Party's infiltration and penetration of the field of education, and the questions asked of petitioner were limited to his

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[17] The principal opinion points out that it was not clear from the record whether the New Hampshire Supreme Court, in affirming Sweezy's conviction, intended to include a question about Sweezy's "belief in Communism" among the questions with respect to which it affirmed, but that it was unnecessary, in the view which the Justices joining in that opinion took, to "resolve affirmatively" that that particular question "was or was not included in the decision by the State Supreme Court" (354 U.S. at 245).

[18] Thus, Mr. Justice Frankfurter, after pointing out that Sweezy stated, in response to questions at the hearing, that he "did not know of any Communist interest in, connection with, influence over, activity in, or manipulation of the Progressive Party" (354 U.S. at 264), observed that (at 266):

> * * * Whatever, on the basis of massive proof and in the light of history, of which this Court may well take judicial notice, be the justification for not regarding the Communist Party as a conventional political party, no such justification has been afforded in regard to the Progressive Party. A foundation in fact and reason would have to be established far weightier than the intimations that appear in the record to warrant such a view of the Progressive Party. [Footnote reference omitted] This precludes the questioning that petitioner resisted in regard to that Party.

participation, as a graduate university student, in Communist Party activities.[19]

(*b*). We cannot accept the suggestion that the authorizing resolution of the House Committee on Un-American Activities—while conferring on the Committee authority to inquire into the Communist Party's infiltration and penetration of the labor movement, government, the motion picture industry, the press, the armed forces, and other segments of our national life and economy—does *not* authorize it to inquire into that same organization's infiltration and penetration of the field of education, where the pertinency of the inquiry is clear. Education does not require special authorization from the House before its Committee, which otherwise conducts its investigations into Communism under its general charter, may conduct an inquiry into Communist penetration of it. Certainly, the House, the parent body of the Un-American Activities Committee, has not so construed its own resolution creating that Committee and defining its powers. For the House has, in effect ratified the Committee's interpretation of its authorizing resolution as permitting an inquiry into Communism in education. That it has done so is evidenced not only by its biennial renewal of the Committee's charter, unchanged, after the Committee's inquiries into this field, but also by the very fact that it cited petitioner for contempt, on the Committee's recommendation, pursuant to the Committee's report of all the details of petitioner's recalcitrance, which included the fact that the inquiry at which the recusancy occurred was into Communism in *education* (*supra*, pp.

[19] Unlike Sweezy, the questions petitioner refused to answer did not relate to teaching or the contents of classes.

10-11). We submit that this interpretation by the House of its own resolution should be conclusive.

There is, furthermore, additional proof that Congress did not intend the Committee's inquiries to stop short of a proper inquiry into the extent of Communist infiltration into education. Congress, at the time of petitioner's appearance before the Committee, had already taken action in accordance with the findings of the Committee in this area. Thus, as noted in the former opinion of the Court of Appeals in this case (Pet. 52), shortly before petitioner's appearance before the Committee, Congress, pursuant to the Committee's recommendation that it should "[w]ithhold all Federal financial support from any educational institution which permits members of its faculty to advocate communism, fascism, or nazism as a substitute for our form of government to the student body * * *," enacted section 228 of the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 667, 38 U.S.C. 933 (G. Ex. 9, pp. 144-5). This section prohibits the payment by the Veterans Administration of any educational and training allowance to any otherwise eligible veteran who enrolls for any course in any educational institution which is listed by the Attorney General as totalitarian, Fascist, Communist, or subversive. And even had there been no such affirmative action on the part of Congress, it would be only reasonable to assume that Congress intended its committees' inquiries into Communism and Communist infiltration of various areas of the national life to extend, properly conducted, to the area of education. For, as the Court of Appeals also pointed out in its former opinion (Pet. 52), "American colleges and universities are holders of contracts with the Government to conduct a variety of

research projects of far-reaching consequence to the national security."

5. Finally, there is no merit, we submit, in petitioner's argument (Pet. 12-13) that the House Un-American Activities Committee's authorizing resolution constitutes "an unconstitutional invasion of his freedom of speech, political and academic association and communication in violation of the First Amendment" (Pet. 12). This Court's *Sweezy* decision, 354 U.S. 234, which petitioner cites for the contention, establishes no such proposition. That Congress itself has the power to inquire into, and to legislate with respect to, the subjects of Communism and the Communist Party, in areas in which they may have an impact, is, we submit, well settled. *American Communications Assn.* v. *Douds*, 339 U.S. 382; *Galvan* v. *Press*, 347 U.S. 522; *Harisiades* v. *Shaughnessy*, 342 U.S. 580; *Barsky* v. *United States*, 167 F. 2d 241 (C.A.D.C.), certiorari denied, 334 U.S. 843; *United States* v. *Josephson*, 165 F. 2d 82 (C.A. 2), certiorari denied, 333 U.S. 838. This, indeed, is implicit in the *Watkins* decision itself, 354 U.S. 178. See also our discussion of this point in our brief in opposition to petitioner's former petition for certiorari (No. 742, Oct. Term, 1956, pp. 9-12).

CONCLUSION

For these reasons, we submit that the decision below is correct and not contrary to the holdings in *Watkins* or *Sweezy*, and that the petition for a writ of certiorari should therefore be denied.

If the Court should be of the view that the issue whether the Committee's authorizing resolution empowers it to investigate Communism in the field of

education (in the way in which it was done here) is doubtful and of such importance as to require issuance of the writ, it is suggested that the writ be limited to that question, since the other issues in the case—including the issue of whether petitioner was sufficiently apprised of the pertinency of the questions—do not in our opinion call for examination by this Court.

If, on the other hand, Judges Edgerton and Bazelon are correct in the view that *Watkins* held the Committee's authorizing resolution to be invalid, we submit that it would be appropriate for the Court to reverse the judgment below summarily, on that ground, without further briefs or arguments.

Respectfully submitted.

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